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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

GERALD C. LAGUENS, Appellant, v. CATHERINE HARRELL, et al., Respondents.	A135499 (Sonoma County Super. Ct. No. SPR-83957)

I. INTRODUCTION

This appeal arises out of a dispute among the children of Vernon and Margaret Laguens, who are all named beneficiaries of the Laguens Family Living Trust (the Trust).[1]

Vernon died in 1999 and Margaret died in 2010, after which appellant, Gerald, became trustee pursuant to the terms of the Trust. However, Gerald's siblings, Catherine, Richard and Patricia (jointly, respondents) removed Gerald without cause and appointed themselves co-trustees. Thereafter, Gerald filed a petition to compel respondents to distribute to him the proceeds of the sale of a Trust asset that Margaret sold after Vernon's death. The trial court denied the petition. We reverse.

[1] For clarity and consistency, we will use first names to refer to individual members of this family.

II. STATEMENT OF FACTS

A. *The Trust*

The Trust was executed on April 1, 1991, and amended and restated for a third and final time on July 11, 1997. Gerald, Catherine, Richard and Patricia are named beneficiaries of specific trust assets pursuant to Article Eleven, and of remainder interests pursuant to Article Twelve of the Trust. The present dispute pertains to the specific distributions required by Article Eleven.

Pursuant to Article Eleven, Vernon and Margaret made provision for "Specific Distributions of Trust Property upon the Death of the Second One of Us to Die." Sections 1, 2 and 3 require the Trustee to make cash distributions of $100,000 each to Catherine, Richard and Patricia. Section 4 then provides for a specific distribution to Gerald of the following assets:

"Upon the death of the second of us to die, our Trustee shall distribute to GERALD C. LAGUENS the following described real estate and business and personal property or the proceeds therefrom if any of these assets have been sold during our lives or the life of either of us:

"a. All of the real property being the partial interest of the Trustmakers in Yolo County AP 043-090-22 with our son, GERALD C. LAGUENS, (commonly known as 38703 and 38707 Road 144, Clarksburg, CA 95831) so that he will be the sole owner of the property or have all the proceeds from the sale thereof.

"b. All of the real property being the interest of the Trustmakers in the house where our son, GERALD C. LAGUENS, resides at the time of the making of this amendment (commonly known as 7784 River Landing Drive, Sacramento, CA 95831) so that he will be the sole owner of the property or have all the proceeds from the sale thereof.

"c. All of the business property of the Trustmakers in Laguens Clarksburg Vineyards, a family partnership and Windsor Creek Ranch including all assets of the business including equipment, supplies, bank accounts used therefore, and accounts receivable."

In July 1997, when Vernon and Margaret executed the third amendment to the Trust, Margaret became sole trustee. She and Vernon also designated Gerald as successor trustee and they named Catherine, Richard and Patricia as the next successor trustees to serve jointly by majority vote.

B. ***Background Pertaining to Gerald's Specific Beneficial Interest***

The property described in Article Eleven, section 4, of the Trust was acquired by Vernon and Margaret in February 1992. At that time, Gerald and his parents purchased a parcel of real property in Yolo County which contained a vineyard and two homes (the Yolo property). Gerald purchased a 53.7 percent interest in the Yolo property and the remaining 46.3 percent was conveyed to the Trust.

Every year from 1992 through 1998, Vernon and Margaret executed a deed conveying a portion of the Trust's interest in the Yolo property to Gerald. Each annual conveyance was valued at approximately $10,000 per parent per year. Vernon died in May 1999. At that time, the Trust's remaining interest in the Yolo property was valued at $280,000. In December 1999, Margaret conveyed to Gerald an additional 3.6 percent of the Trust's interest in the Yolo property, which was valued at $10,000.

In January and February 2000, Margaret and Gerald executed an agreement pursuant to which Gerald purchased the Trust's remaining interest in the Yolo Property for $270,000. Gerald paid the Trust with a Promissory Note dated January 3, 2000, secured by a Deed of Trust against the Yolo property. The Note required Gerald to make annual payments of interest only from December 2000 until December 2040, at which time the remaining unpaid principal and interest was "due in full." "[E]vents of default," which would make payment of the entire debt due immediately, included the death of the "Borrower or Lender."

In 2005, Margaret reviewed the terms of her Trust with an attorney named John Welch. Welch summarized the meeting in an April 6, 2005, letter. He noted, among other things, that the Trust was divided in two following Vernon's death, and that the trust holding Vernon's assets became irrevocable. Welch also advised Margaret as follows:

"At your death, the remaining assets of the two trusts will be consolidated and three of your children/beneficiaries will each receive $100,000 (Catherine, Richard and Patricia) and Gerald will receive the River Landing and ranch property in Yolo County. This would include the cancellation of Gerald's promissory note for the purchase of the Ranch. The remainder of the Trust assets would be distributed equally to your four children."

Margaret died on July 20, 2010, at the age of 86. By that time, Gerald had made payments of principal and interest on the Promissory Note totaling $146,000. After Margaret's death, Gerald served as trustee until April 5, 2011, when he was removed without cause by respondents, who appointed themselves co-trustees.

On May 6, 2011, Gerald made a "formal request" by e-mail that the co-trustees pay him the proceeds of the sale of the Trust's interest in the Yolo property pursuant to Article Eleven. Gerald maintained that those proceeds consisted of the Promissory Note and payments he had made to the Trust to pay down the Note. He stated that he already had the Promissory Note, but demanded that the co-trustees distribute to him the $146,000 that he paid to the Trust to pay down the Promissory Note. This demand was reiterated by Gerald's attorney in letters dated July 13 and July 28, 2011.

On August 10, 2011, the co-trustees rejected Gerald's demand. They took the position that Gerald obtained his specific distribution under Article Eleven when Margaret conveyed the Trust's remaining interest in the Yolo property to him in 2000. Furthermore, they maintained that the Promissory Note was an asset of the Trust which became due in full upon Margaret's death. According to the co-trustees' calculations, the remaining balance due on the note was $290,550 and, once Gerald made that payment to the Trust, the co-trustees would distribute the remaining assets and close the Trust.

C. *Gerald's Petition*

On September 8, 2011, Gerald filed a petition pursuant to Probate Code section 17200 to compel the co-trustees to (1) "acknowledge and confirm cancellation" of his Promissory Note to the Trust; (2) make a specific distribution to him pursuant to Article

Eleven of the proceeds of the sale of the Trust's interest in the Yolo property; and (3) pay him interest, attorney fees, and costs.

There was a lengthy delay before the court ruled on this petition because the judge who initially heard the case recused himself before issuing a final decision. The new trial judge, the Honorable Arthur Wick, held a hearing on the petition on March 13, 2012, and took the matter under submission. On April 25, 2012, the court filed a judgment denying Gerald's petition. The court's findings were set forth in a Statement of Decision filed along with the judgment.

First, the court found that Gerald was not entitled to the proceeds of the sale of the Yolo property pursuant to Article Eleven. The court reasoned as follows: "The plain language of Article Eleven, Section 4, provides that petitioner is to receive the property 'or the proceeds therefrom'—not both. Having received the property, he is not entitled to any 'proceeds.' Petitioner urges a tortured and self-interested interpretation of a fairly standard estate planning clause. The phrase 'or the proceeds' was clearly intended to protect Gerald in the event that his parents sold their interest in the property to a third party; it was never intended to provide a double inheritance to petitioner. Petitioner has failed to rebut the presumption that the surviving trustor, in conveying the trust's remaining interest to petitioner, intended that petitioner should own the property subject to the note, which would be distributed among the trust beneficiaries upon her death."

Second, the court found that the Promissory Note was not cancelled upon the death of Margaret. Though the court's reasoning is somewhat confused, it appears that the court found insufficient evidence that the parties intended such a result. In this regard, the court found that the opinion of the attorney Margaret consulted in April 2005, John Welch, was irrelevant. The court also emphasized that neither the Trust nor the Promissory Note contains a " 'cancellation upon death' " clause, but the Promissory Note does contain a clause which expressly provides that the debt " 'shall become due immediately, without demand or notice: [on] 2) the death of the Borrower or Lender . . . .' " The court acknowledged that the lender in this case was the Trust and not

an individual, but nevertheless concluded that all parties understood that the term " 'death' " was used to refer to Margaret's death.

Third, the court found that this "case can and should be decided solely upon the plain language of the instruments." Accordingly, the court found that, notwithstanding some opinions it expressed at the hearing on the petition, the statutory presumption set forth in Probate Code section 21135 "has no application to these facts."[2] The court also declined to rule on Gerald's numerous objections to declarations submitted by the co-trustees "because the Court did not consider those declarations in reaching its decision."

Finally, the court summarized its findings as follows: "The Court thus finds that petitioner's promissory note belongs to the trust and is not distributable to petitioner; that such note is not cancelled by reason of Article Eleven of the restated trust; and that petitioner remains liable on the note. The Court further finds that petitioner is not entitled to distribution of amounts paid by him as payments on the note."

III. DISCUSSION

This appeal raises two related questions: First, does Article Eleven of the Trust entitle Gerald to a distribution of the proceeds of the Yolo Property sale notwithstanding that he already owns the property outright? Second, is Gerald liable to the Trust for the balance due under the Promissory Note or is that Promissory Note a Trust asset specifically distributed to Gerald pursuant to Article Eleven?

Absent a conflict in relevant extrinsic evidence, the interpretation of a trust instrument is a question of law which we consider de novo. (*Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439-1440.) "In interpreting the trust instrument, we seek the intent of the trustors as revealed in the document considered as a whole. [Citation.] In

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[2] Probate Code section 21135 states, in part: "(a) Property given by a transferor during his or her lifetime to a person is treated as a satisfaction of an at-death transfer to that person in whole or in part only if one of the following conditions is satisfied: . . . (4) The property given is the same property that is the subject of a specific gift to that person."

Respondents relied on this statute in the lower court but, on appeal, they concede that this provision does not apply.

addition, ‘ “[i]n interpreting a document such as a trust, it is proper for the trial court in the first instance and the appellate court on de novo review to consider the circumstances under which the document was made so that the court may be placed in the position of the testator or trustor whose language it is interpreting, in order to determine whether the terms of the document are clear and definite, or ambiguous in some respect.” ’ [Citation.]” (*Ibid.*)

Applying these rules, we find that Article Eleven entitles Gerald to a distribution of the proceeds of the sale of the Yolo property. Pursuant to that provision, Vernon and Margaret made specific at-death bequests to each of their four children. They gave Catherine, Richard and Patricia $100,000 each, and they gave Gerald their entire remaining interest in the Yolo property which included “real estate and business and personal property or the proceeds therefrom *if any of these assets* have been sold during our lives or the life of either of us.” (Italics added.) Since Margaret sold the Trust’s partial interest in the Yolo property before she died, the proceeds of that sale must be distributed to Gerald pursuant to Article Eleven.

The trial court reached a contrary conclusion because it found that Article Eleven unambiguously states that Gerald may receive the property or the proceeds therefrom, but “not both,” and, since he has already received the property, he is not entitled to any “proceeds.” First, Article Eleven does not contain the term “not both” or any other language conveying this limitation on the bequest. Indeed, when read as a whole, section 4 of the Article Eleven contemplates that the Trust’s interest in the Yolo property at the time of the Trustors’ death may consist of multiple assets, including real estate, business and personal property, and the proceeds from the sale of any of those assets. Second, and more important, the trial court’s entire analysis rests on the false premise that Gerald “received” the Trust’s share of Yolo property pursuant to Article Eleven. To the contrary, Gerald *purchased* that property from Margaret in 2000. Thus, to the extent that the proceeds from the 2000 sale of the Yolo property are an asset of the Trust, Article Eleven provides that those proceeds must be distributed to Gerald.

The undisputed evidence also establishes that the Promissory Note represents the proceeds of the sale of the Trust's partial interest in the Yolo property. Margaret sold that Trust asset for $270,000, which was paid to the Trust in the form of the Promissory Note. When Margaret died, the Trust still held the Promissory Note and Gerald acquired a vested right to acquire that note pursuant to Article Eleven. Thus, Gerald is no longer liable to the Trust for the balance due under the Promissory Note; he now owns that note and any balance due is owed to him.

The trial court found that Gerald is still liable to the Trust for payment of the Promissory Note because neither the Promissory Note nor the Trust contains a "cancellation upon death" clause. However, the absence of such a provision is immaterial in light of Article Eleven which unequivocally provides that the proceeds of the Yolo property sale must be distributed to Gerald upon the death of the second parent to die, i.e., Margaret.

The trial court was also led astray by a provision in the Promissory Note stating that the entire debt would be immediately due upon the death of the Lender. As the court admitted, the Lender was a trust not an individual. Furthermore, even if we accept the trial court's notion that the parties intended for Margaret to be the Lender, and the entire debt did become due upon Margaret's death, that debt was owed to Gerald, not to the Trust estate.

The two erroneous findings outlined above require us to reverse the judgment, which raises a third issue for the trial court to address on remand. Gerald contends that the proceeds from the sale of the Trust's interest in the Yolo property also include the payments he made to the Trust between 2000 and 2009 to pay down the Promissory Note. The trial court did not reach this issue, which strikes us as more complicated than the parties realize. For example, we question whether interest payments that Gerald made on the Promissory Note can properly be considered proceeds of the sale. In any event, this issue can and should be resolved by the trial court in the first instance.

Respondents' arguments on appeal do not alter any of our conclusions. Their primary contention is that the judgment must be affirmed because it is supported by

substantial evidence. To support this contention, respondents invoke the rule that, when extrinsic evidence regarding the interpretation of a trust instrument is in conflict, we apply a substantial evidence standard of review. (See, e.g., *Estate of Powell, supra*, 83 Cal.App.4th at pp. 1439-1440.) As reflected in our factual summary, the trial court made an express finding that it could resolve this petition "solely upon the plain language of the instruments." Despite this finding, the statement of decision indicates that the court did consider some extrinsic evidence regarding the intent of the Trustors. However, contrary to respondents' contention on appeal, there was no conflict in that extrinsic evidence. Thus, the substantial evidence rule does not apply and, even if it did, this judgment is not supported by substantial evidence.

Respondents contend that the Promissory Note itself is extrinsic evidence which conflicts with Gerald's interpretation of Article Eleven. Based on our analysis above, we disagree. Nothing in the language of the Promissory Note precludes a straightforward application of Article Eleven of the Trust, which requires that the proceeds of the sale of the Yolo property asset be distributed to Gerald upon the death of both parents.

Respondents also contend that declarations they filed in the trial court constitute extrinsic evidence that the Trustors did not intend for Gerald to have both the Yolo property and the proceeds from the sale of the Trust's interest in that property. All of the parties filed declarations on this subject. Gerald stated that he conceived of the 2000 sale and Promissory Note transaction as a way to provide Margaret with additional funds during her life because it appeared likely at that time that she would need to pay for long term health care. The co-trustees all filed declarations in which they disputed that the transaction was Gerald's idea. All of them stated that they were never informed about the Promissory Note until after Gerald was removed as trustee, that Margaret did not need additional funds for her care, and that they did not believe that Margaret ever intended that Gerald's debt should be forgiven after her death.

As reflected in our factual summary, the trial court expressly stated that it did not consider the respondents' declarations. On appeal, respondents concede this fact but argue that this evidence was, nevertheless, presented to the court "and presumably was

reviewed." This argument has no merit. The respondents' declarations are not evidence supporting the judgment because the trial court refused to consider them and that ruling has not been appealed.

Taking a different tact, respondents contend that even if the language of Article Eleven is subject to our independent review, this court "may not overrule the probate court's interpretation unless it is actually erroneous, i.e., not as tenable as the reviewing court's interpretation." (Citing *Estate of Newmark* (1977) 67 Cal.App.3d 350, 359.) "It is true that cases have said that even in the absence of extrinsic evidence the trial court's interpretation of a written instrument must be accepted 'if such interpretation is reasonable, or if [it] is one of two or more reasonable constructions of the instrument' [citations], or if it is 'equally tenable' with the appellate court's interpretation [citations]. Such statements . . . mean only that an appellate court must determine that the trial court's interpretation is erroneous before it may properly reverse a judgment. [Citation.] They do not mean that the appellate court is absolved of its duty to interpret the instrument." (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866.)

Respondents also argue that, even under a de novo standard of review, the trial court's interpretation of Article Eleven must be affirmed because the plain language of that provision compels the conclusion that Gerald is entitled to "be either the sole owner **or** to have the proceeds of sale." According to respondents, the term "or" has an established meaning and the use of that term in Article Eleven means that "Gerald is not entitled to receive both the sale proceeds *and* sole ownership of the property." However, in making this argument, respondents ignore the stated purpose of Article Eleven which is to make a specific distribution from the Trust to each of the beneficiaries *after the death of both of their parents*. Gerald is not receiving a post-death distribution of both the sale proceeds and sole ownership of the property; his only distribution from the Trust pursuant to Article Eleven is the proceeds of the sale.

Both respondents and the trial court maintain that Gerald is somehow seeking to obtain a double recovery. Indeed, respondents contend that Gerald's prosecution of this action is so unreasonable that they are entitled to an award of attorney fees on appeal.

The evidence relevant to the petition simply does not support their claim. That evidence shows that Gerald purchased the Trust's interest in the Yolo property more than 10 years ago, while his mother was alive. The Trust is being distributed now, after the death of both Trustors. The fact that Gerald is the current owner of the Yolo property has nothing to do with the distribution of this Trust, aside from establishing that the property is no longer a Trust asset. The relevant fact is that the Trust sold its interest in that property before Margaret died. Thus, to the extent proceeds from the sale remain in the Trust, Article Eleven clearly and unequivocally states that those proceeds are to be distributed to Gerald.

The Promissory Note constitutes proceeds of the sale of the Trust's interest in the Yolo property which remained in the Trust when Margaret died. Therefore, the rights conferred on the Trust by that instrument now belong to Gerald. Whether payments that Gerald made on the Promissory Note before Margaret's death are also proceeds of the sale and, if they are proceeds, whether they still remain in the Trust, are questions for the trial court to answer on remand. In addition, the trial court must also resolve Gerald's claim that he is entitled to interest, attorney fees, and costs.

IV. DISPOSITION

The judgment is reversed and this case is remanded for further proceedings consistent with this decision. Gerald is awarded his costs on appeal.

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Haerle, J.

We concur:

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Kline, P.J.

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Richman, J.